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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/587,653	06/05/2000	David V. Sangar	UTSG.231US	8912

7590 06/03/2005

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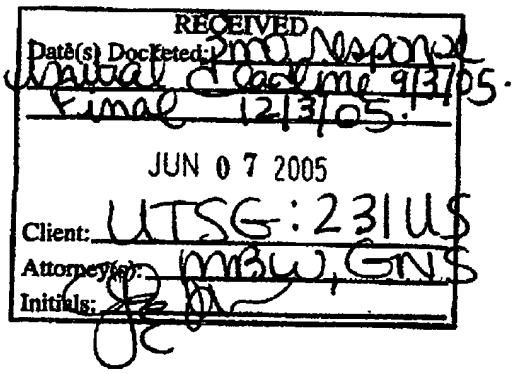
Austin, TX 78701

EXAMINER	
SCHEINER, LAURIE A	
ART UNIT	PAPER NUMBER
1648	

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



PTO-90C (Rev. 10/03)

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APPLICATION NO./ CONTROL NO. 09/587,653	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.

EXAMINER

ART UNIT	PAPER

20050531

DATE MAILED:

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Commissioner for Patents

Applicants' reply filed on March 30, 2005 is not responsive to the prior Office action because of the following omission(s) or matter(s): the amendments are directed to an invention that is independent or distinct from the invention originally elected. That is, the amendment canceling all claims drawn to the elected and examined invention and presenting only claims drawn to a non-elected invention is non-responsive. The remaining claims are not readable on the elected and examined invention. A responsive reply by applicants must provide a showing under 37 CFR 41.202(d) as described below. Alternatively, applicants may persue the remaining claims of the instant amendment by filing a continning (divisional) application.

At least originally elected and examined claim(s) 1-17, 19-46, 48, 49 and 51-56 of the application are believed to interfere (35 U.S.C. § 135(a)) with at least claim(s) 1-24 of U.S. Patent 6,627,437 B1 (Traboni). The patent claims priority of U.S. (or foreign identified by country) application GB 9912432 and appears to be entitled to benefit for the purpose of a priority contest under 35 U.S.C. § 135(a).

The patent is not prior art under 35 U.S.C. § 102(e). See, e.g., In re Hilmer, 359 F.2d 859, 149 USPQ 480 (CCPA 1966). Nevertheless, a patent cannot be issued to applicant until it prevails in an interference with the patent. In any interference, applicants would be the junior party.

Accordingly, applicants are required to make a showing under 37 CFR § 41.202(d) (see Notice of Final Rule, 69 Fed. Reg. 49960, 50019 (Aug. 12, 2004)) as to why it would prevail in an interference with the patent. Pursuant to 37 CFR 41.202(c), applicants must also comply with the requirements set forth in 37 CFR 41.202(a)(2)-(a)(6).

Note that "New evidence in support of priority will not be admitted except on a showing of good cause." 37 CFR § 41.202(d)(2); Hahn v. Wong, 892 F.2d 1028, 13 USPQ 1313 (Fed. Cir. 1989); Huston v. Ladner, 973 F.2d 1564, 23 USPQ2d 1910 (Fed. Cir. 1992). Hence, applicants should not expect to make a showing in the first instance after the application is forwarded to the board for a determination of whether an interference should be declared.

A shortened statutory period for reply to this communication is set to expire THREE MONTHS from the mailing date of this action. Extensions of time may be granted under 37 CFR 1.136(a). In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this communication.

If a showing is timely presented, it will be forwarded to the board where it will be evaluated pursuant to 37 CFR § 41.202(e). If at the end of the six-month period, a showing is not timely presented, the application will be forwarded to the board where it would be expected that an order to show cause would be issued pursuant to 37 CFR § 41.202(d)(2).

Laurie A. Scheiner
Primary Examiner
Art Unit: 1648